

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1543

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellant

v.

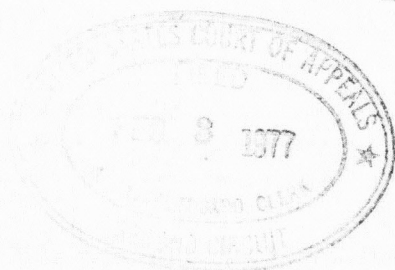
NICHOLAS ALBERTI,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

APPENDIX

RICHARD J. ARCARA
United States Attorney,
Western District of New York.

JEROME M. FEIT
KATHERINE WINFREE
Attorneys,
Department of Justice,
Washington, D.C. 20530.



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TABLE OF CONTENTS

	<u>Page</u>
Criminal Docket -----	1-4
Grand Jury Testimony -----	5-49
Indictment -----	50-54
Application and Order, February 6, 1976 -----	55-62
Order, February 24, 1976 -----	63-65
Excerpts from Proceedings at Trial -----	66-74
Newspaper Articles -----	75-76
Order, September 30, 1976 -----	77-92
Certificate of Service -----	93

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	
NICHOLAS ALBERTI	
Making False Declarations, before United States Grand Jury, in violation of Title 18, U.S.C., Sect. 1623	
	For Defendant:
	Brian Toohey (assigned)
Offense: 10/16/1974	1 Ct.

[illegible]

DATE 1975	PROCEEDINGS
Feb. 12	Filed Indictment
Feb. 12	J.S. 2 made
Feb. 12	Govt. requests a warrant of arrest to issue. Granted. Issued warrant.
Feb 13	Proceedings before the Magistrate - Deft appeared without an attorney and requested assignment of counsel. Bail was set at \$5,000 recognizance and deft. was released after completing a financial statement. Proceedings were adj. until 2:00 pm for arraignment. 2:00 p.m.---Not guilty plea entered. Discovery motions are to be filed by 2/24; Govt's response to be filed by 3/3; Argument of motions 3/11/75
Feb 24	Filed deft's notice of motion for discovery and inspection, inspection of Grand Jury minutes, and Bill of Particulars, ret. 3/11/75 before the Magistrate.
Feb. 25	Proceedings before the Magistrate - No appearance for defendant. Mr. Mellenger, AUSA, has been advised by Mr. Gresens. that he has not received defendant's motion
Mar. 4	Filed Govt's answer to Defendant's Motions for Discovery and Inspection
Mar. 4	Proceedings before the Magistrate - No appearance for defendant. Gov

DATE 1975	PROCEEDINGS
Mar. 4	has advised the Court its response is being filed today. Argument on March 11, 1975 as previously scheduled.
Mar. 11	Proceedings before the Magistrate - Argument on motion for bill of particulars denied in part. Adj. to 4/15/75 for further argument on motion for disclosure of names of Grand Jurors.
Mar. 18	Filed Govt's supplemental answer to deft's motions for discovery
Mar. 28	Filed Govt's motion to move action to trial
Apr. 4	Filed Cy. 5 of CJA-20 - Order appointing Brian F. Toohey, Esq., as counsel -- Maxwell, Mag.
Apr. 15	Proceedings before the Magistrate - No appearance for the defendant; adj. to 4/22/1975 for argument at the request of defendant
Apr. 22	Proceedings before the Magistrate - Argument on discovery motion for the criminal record of deft-Court directed Govt to furnish a list of convictions it intends to use at trial. Argument on motion for inspection of list of the 23 impaneled Grand Jurors - granted.
Apr. 25	Filed \$5000 recognizance bond for deft
May 27	Status report. Adj. to 6/30 for additional defense motions.
June 11	Filed Order that the Atty. for Deft. be provided access to the following Grand Jury records: Voter Registration List; Qualified Jury List; All questionnaires completed by jurors prior to their inclusion on the qualified jury list; Names and addresses of the two panels of Grand Jurors described above-- Maxwell, Magistrate.
June 30	Return date for additional motions. Adj. 8/11/75
Aug. 11	Return date for filing additional motions. Adj. to 9/8/75
Sept. 4	Filed Magistrate's Order that pur. to the Jury Selection Act of 1968, the Clerk of the Court is directed to provide the Atty. for the defendant herein access to the following Grand Jury records: (1) Voter Registration list; (2) Qualified Jury list (3) Names and addresses of the two panels of Grand Jurors described above, and (4) all questionnaires completed by the two above described panels of Grand Jurors prior to their inclusion in the qualified Jury List. Maxwell, Magistrate.
Sept. 8	Filed Deft's notice of motion for dismissal of the Indictment, etc., ret. 9/29/75
Sept. 8	Return date for motions. Adj. to 9-29-75
Sept. 29	Deft's motion to dismiss. Adj. to 10-6-75
Oct. 6	Filed Govt's response to Deft's motions to dismiss the Indictment and to Strike surplusage
Oct. 6	Defts. motion to dismiss the Indictment. Adj. to 10/14/75
Oct. 14	Deft's motion to dismiss. Adj. to 11/24/75
Nov. 24	Status report. Adj. to 12-1-75 at request of Govt. for filing of memo Oral argument 12-8-75 This is not a status report but a motion to dismiss indictment.
Dec. 4	Filed Government's supplemental response to defendant's motion to dismiss the Indictment
Dec. 8	Oral argument on motions. Adj. to 1-5-76
1976	
Jan 5	Oral argument on motions. Adj. to 1-9-76
Jan 9	Pre trial conference held. Motion by deft. to dismiss the complaint submitted.
Feb. 6	Filed application and order regarding "surplusage" in Deft's Indictment in accordance with the Court's oral direction of 1/9/76, to strike certain of the deft's grand jury testimony from the body of the indictment, on the ground that such testimony is "surplusage";

CRIMINAL DOCKET

SHEET NO. 4
CR-75-40

7-15895

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
2/6/76	and that the retyped version which is attached hereto be presented to the jury in the trial of the above-captioned case--CURTIN, J.		
2/24/76	Filed order denying the deft's motion to dismiss. Curtin, J.		
May 27	Pre-trial conference held. Jury selection 6/1/76.		
June 1	Govt. moves case ready for trial, before Hon. John T. Curtin, Buffalo, N.Y., whereupon the jury is duly enpanelled. Trial is adj. to 6-9-76.		
June 9	Filed Deft's trial memorandum		
June 9	Filed Deft's request to charge		
June 9	Trial resumes from 6/1/76 with the same appearances & jury: trial is adj. until tomorrow -		
June 10	Trial continues from yesterday with the same appearances & jury. Deft. moves to dismiss the Indictment. Decision reserved. Trial adj. until tomorrow morning --		
June 11	Trial resumes from yesterday with the same appearances & jury-- Deft. moves to dismiss the indictment. Decision reserved. Court rules on requests to charge, Trial is adj. until Monday, June 14, 1976		
June 14	Trial resumes from 6/11/76 with same appearances & jury. The jury retires to deliberate upon their verdict; Jury returns with the following verdict: Deft. is guilty as charged in the Indictment. Sentence is deferred 7/26/76		
June 18	Filed Deft's notice of motion for judgment of acquittal		
June 18	Motion to dismiss the Indictment. Adj. 7/2/76 for Govt. response. Oral argument 7/16/76		
June 28	Filed Ct. Stenographer's transcript of excerpts from Proceedings of trial before Judge Curtin, taken on 6/14/76		
July 2	Filed Government's response to Defendant's motion for Judgment of acquittal notwithstanding the verdict and a new trial		
July 2	Govt's response due. Response filed.		
July 16	Oral argument on motion to set aside jury verdict and for a new trial. Submitted.		
July 21	Filed letter dated 7/19/76 to Judge Curtin, from Brian Toohy, counsel for the deft. re the applicability of his motion for judgment of acquittal notwithstanding the verdict and in the alternative, for a new trial due to possibly prejudicial publicity during the trial, to the American Bar Association's Project on Standards For Criminal Justice, "Standards Relating to Fair Trial and Free Press", etc.		
July 26	For sentence. Adj. until after court decides motion for a new trial, etc.		
Aug. 5	Oral argument on motion to dismiss and for a new trial. Submitted.		

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NICHOLAS ALBERTI

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BEFORE THE FEDERAL GRAND JURY



6 THE UNITED STATES OF AMERICA :

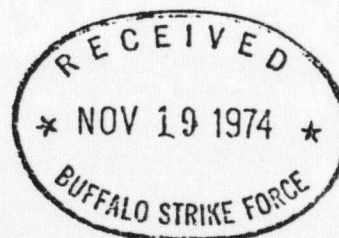
7 -vs- :

8 JOHN DOE :

9 ----- X
10
11 Stenographic Transcript of evidence presented
12 before the Grand Jury of the United States District
13 Court for the Western District of New York, convened
14 at 502 United States Court House, Buffalo, New York,
15 on Wednesday, October 16, 1974.

16
17 APPEARANCES:

18 ROBERT STEWART, ESQ.,
19 Buffalo Strike Force
20 Department of Justice
21
22



RICHARD J. KLAK
COURT REPORTER - NOTARY PUBLIC

P R O C E E D I N G S

THE FOREMAN: Raise your right hand, please.

Whereupon,

NICHOLAS ALBERTI

being first duly sworn, was examined and testified as follows:

THE FOREMAN: Please be seated.

EXAMINATION BY MR. STEWART:

Q. Mr. Alberti, if at any time any of the questions that either I or members of the Grand Jury ask you, give you any trouble and you want to talk to your attorney, Mr. Abramowitz, just ask to be excused and you can go outside for as long as necessary to get the clarification that you want. Now, Judge Curtin has signed an order, the original copy of which I have in my hand, signed it this morning, and this order, which is on the application of the United States, directs you to appear here today and to testify fully and completely about

3
1 the questions that are asked of you. A copy of
2 that order was served upon your attorney a little
3 while ago. He talked to you about it, did he not?

4 A. Yes, sir.

5 Q. First, Mr. Alberti, are you acquainted with Joseph
6 M. Fino?

7 A. Yes.

8 Q. How long have you known Joe Fino?

9 A. About thirty years.

10 Q. And, how did you first make the acquaintance of
11 Joseph Fino?

12 A. Well, how I first met him, I really don't know.
13 I don't remember where I first met him.

14 Q. You didn't grow up together, did you?

15 A. No, but I do just remember before I got married,
16 about twenty-five years ago when I got married, he
17 invited me and my wife, who at the time was my
18 girlfriend, to have dinner with them, him and his
19 wife and myself and my girlfriend, who is now my
20 wife, we went out to dinner at the Glen Casino in
21 Williamsville.

22 Q. At that time, what business were you engaged in?

23 A. Working, unemployed, working half of the time and

4
1 half of the time unemployed.

2 Q. Were you at that time engaged in any illegal
3 activities?

4 A. Picking up a little horse action now and then.

5 Q. When you picked up your "horse action" during those
6 days and, that goes back now to the 1940's, does it
7 not?

8 A. I don't think that I was picking up horse action
9 in the '40's.

10 Q. When did you start picking up action?

11 A. In 1940, I just come out of prison in '40.

12 Q. Did you know Mr. Fino when you were in prison?

13 A. No.

14 Q. What prison were you in?

15 A. Attica.

16 Q. Wasn't Mr. Fino in Attica?

17 A. He probably was there at the time, maybe, but I
18 didn't know him. Maybe I wasn't in there at the
19 time that he was in there. I don't know. Maybe
20 I wasn't there at the time that he was there.

21 Q. Did you know Mr. Dan Sansonese?

22 A. I have known Dan Sansonese for a number of years.

23 Q. Were you in prison with Mr. Dan Sansonese?

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A. I don't remember. I think that I was. I presume that I was.

Q. He was in Attica with you?

A. Yes.

Q. What were you in prison for in Attica?

A. Violation of probation.

Q. What were you on probation for?

A. For violation of parole for the crime I was sent to prison for in 1930.

Q. What was that crime?

A. That crime was for robbery, armed robbery, first degree, which I was innocent of.

Q. Who was it that committed that particular robbery?

A. I don't know. They claim it was two fellows with me. The people that testified at the trial, that took the stand for the Judge or the Court or the State, they positively identified me and they couldn't identify the other two fellows that robbed the money. They told them to open up the cash register or open up the safe and they couldn't identify them people, but they identified me as the fellow standing by the door with two guns in my hand. I never saw two guns in my life. That is

1 the kind of a crime I went to prison for.

2 Q. How long were you in prison?

3 A. Ten years.

4 Q. And, you got out sometime in 1940?

5 A. Yes, right.

6 Q. Then you went into bookmaking?

7 A. On and off. I don't know how many years, how many
8 weeks, how many days, but whenever I could make a
9 dollar to help myself, I picked up a little action.
10 If there was anybody that I could give it to, I
11 gave it to them.

12 Q. Who did you lay off your action to?

13 A. When I was picking up action, I gave it to Nick
14 Fino or his wife, Rosalie Fino.

15 Q. You are talking now about 1970?

16 A. 1970.

17 Q. Who did you lay off your action prior to that?

18 A. I don't remember who I gave my action to previous
19 to that. I don't remember even picking up any
20 action.

21 Q. Mr. Alberti, there is a court reporter taking down
22 everything that you are saying. This is a Court
23 Order. The Court Order directs you to testify.

1 A. I am testifying to the best of my ability.

2 Q. Now, you think very, very carefully about who you
3 were associated with back in the 1950's, in the
4 1960's?

5 A. Just the Fino family, that is all.

6 Q. Okay. Now, when was it that you first began laying
7 off action or giving your action to the Fino
8 family?

9 A. It could have been in the '50's or '60's, but I
10 don't remember. I don't remember the exact date.

11 Q. Did you ever give your action to anybody else but
12 the Finos?

13 A. No, nobody else.

14 Q. And, which Fino was it that you gave your action
15 to?

16 A. Nick Fino, Nick Fino. Sometimes he wouldn't answer
17 the phone and sometimes his wife Rosalie would
18 answer the phone.

19 Q. She works for her husband and takes action?

20 A. Yes, or either Joey Giallella.

21 Q. How long has Joey Giallella been working for the
22 Fino family?

23 A. I don't know. I don't know that.

1 Q. Now, during the 1950's and the 1960's, up to and
2 including May of 1971, that is May of 1971 is the
3 time of the wire tap?

4 A. Yes.

5 Q. Is it your testimony that you were in the business
6 of accepting wagers on horses and that you turned
7 in your action during this period of time, nearly
8 twenty years, to Nicholas Fino?

9 A. Yes.

10 Q. And, people associated with Nicholas Fino?

11 A. Whatever time I picked up horse action that is all
12 I gave it to is Nick Fino and Rosalie Fino.

13 Q. And, the time span there is about twenty years?

14 A. Roughly around there, yes, probably.

15 Q. Give or take?

16 A. Give or take.

17 Q. Give or take a few years?

18 A. Yes.

19 Q. Mr. Alberti, how many times were you arrested for
20 illegal gambling during the 1950's and 1960's?

21 A. I belive altogether I was arrested for picking up
22 horse action about three times, I believe, somewhere
23 around there.

1 Q. How was it that you managed not to get arrested the
2 rest of the time?

3 A. Because I probably wasn't doing nothing at the time.
4 When I was picking up action it was my hard luck to
5 get nailed with a few dollar bets. If you ask me
6 how many dollars I had when I got pinched these few
7 times, it was four dollars, six dollars, that is the
8 kind of bets that I had in my pocket and I was
9 pinched and convicted of it.

10 Q. In the 1971 wire tap, however, you handled a fair
11 amount of action, didn't you?

12 A. I just called in my own action, fourteen dollars,
13 eighteen dollars, somedays thirty dollars, forty
14 dollars if I had any action. If I didn't have any
15 action, I just called in my own play.

16 Q. Now, during this period of time, 1950, 1960, up to
17 and including May of 1971, Mr. Alberti, did you
18 ever pay off any public officials in order to avoid
19 detection or prosecution for your bookmaking
20 activities?

21 A. Never, not one penny.

22 Q. When I say, "Did you ever pay off any public
23 officials," I am also including your organization,

1 the people that you worked for, the Finos?

2 A. I gave them whatever money they had coming at the
3 end of the week. If the sheet tallied eighty
4 dollars or ninty dollars, I gave them forty dollars
5 or forty-five dollars.

6 Q. How did that arrangement work?

7 A. Well, let's say from Monday through Saturday you
8 total up for the week how much your play was. If
9 your play was a hundred dollars for the week and
10 you paid out sixty dollars, that left you forty
11 dollars balance, the forty dollar profit; so you
12 would split it up twenty dollars apiece.

13 Q. Okay. So, that your split with the Finos was a
14 50-50 arrangement?

15 A. Yes, right.

16 Q. Now, for the 50% that you got from the Finos or
17 that you gave the Finos, what did you get in return?
18 In other words, 50% of your profits are being split
19 with the Finos.

20 A. Yes.

21 Q. What did you get in return?

22 A. Nothing.

23 Q. Why did you give them 50% of your profit then?

1 A. They would book the bets. If I didn't have no
2 money to pay off, let's say. if I needed eighty
3 dollars or ninty dollars or a hundred dollars to
4 pay off, I got it from them. If I was behind two
5 or three hundred dollars before the week was over,
6 I had to make it up before I made a profit. They
7 would have to get their money back.

8 Q. Do you know how much money approximately Rosalie
9 Fino and Joseph Fino made during the 1950's and
10 1960's on an average annually?

11 A. Not one penny do I know. I don't know any more
12 about them people than you do. I don't know how
13 much money them people make. I only know what
14 money I gave them.

15 Q. You talked to them everyday?

16 A. That don't mean anything.

17 Q. Just a minute, Mr. Alberti, I don't mean to argue
18 with you.

19 A. I am not arguing either.

20 Q. You did talk to either Rose Fino or Joe Fino
21 everyday?

22 A. No, not everyday. When I called in, yes, I did
23 talk to them.

1 Q. That was almost everyday, wasn't it?

2 A. No, not everyday.

3 Q. A few days a week at least?

4 A. Yes, a few days a week.

5 Q. And, you used the code name "Cita?"

6 A. Yes.

7 Q. Which means city?

8 A. Yes.

9 Q. And, did Rose Fino or Joe Fino ever mention to you
10 that they were paying any money to any public
11 officials in order to avoid detection?

12 A. No, never heard it once.

13 Q. Never heard of any corruption?

14 A. Never heard it once.

15 Q. I think you said that Joseph Giallella was
16 associated with you throughout this period of time?

17 A. Yes, sir.

18 Q. Always in the office taking the bets?

19 A. I wouldn't know. I would catch him there now and
20 then. Sometimes he wouldn't be there and Rose Fino
21 would take the play, the action.

22 Q. How about Mrs. Tomaselli, Mrs. Angela Tomaselli?

23 A. Never had anything to do with her.

1 Q. You were at her house?

2 A. I was at her house as far as giving her bets. I
3 didn't know the woman existed until Nick Fino
4 brought me over to her house.

5 Q. In '71 or '72?

6 A. Whatever it was.

7 Q. Why did he bring you to her house?

8 A. Just to help out to figure out some bets, some
9 sheet work.

10 Q. You were working in the office that day?

11 A. No. He used to call me up on the phone anytime he
12 needed me and we would meet and go down and see
13 this woman. She was bookmaking. She had all kinds
14 of bets herself. I would go down and straighten
15 out her sheets.

16 Q. She was having a problem with her sheets?

17 A. I don't know if you would call it a problem or
18 what.

19 Q. There was this guy Tony Page?

20 A. Yes. I remember him through the courts, but other
21 than that, I didn't know him before that.

22 Q. You didn't know him at all?

23 A. Not at all. The first time I met Tony Page or

1 heard his name was in the courts.

2 Q. Do you remember Tony Page being at Mrs. Tomaselli's
3 house, don't you?

4 A. No. I don't remember seeing Tony Page in
5 Tomaselli's house.

6 Q. Did you know that Page was having trouble with Mrs.
7 Tomaselli?

8 A. No.

9 Q. You didn't know nothing about that?

10 A. Nothing, nothing whatsoever.

11 Q. You said that you first met Joe Fino at the time
12 of your marriage; is that right?

13 A. Twenty-five, twenty-seven, twenty-eight years ago,
14 give or take a few years.

15 Q. And, he at that time invited you to dinner?

16 A. Right.

17 Q. Why did he invite you to dinner?

18 A. Well, just acquaintances, friends, casual friends.

19 I guess he liked me and he asked me if it would be

20 all right if he invited me out to dinner with my

21 wife, at that time my girlfriend, which I said

22 "Yes. Sure. Fine;" so I accepted the invitation.

23 Q. What did Joseph Fino do at that time?

1 A. I don't know. I couldn't tell you. I don't know
2 what kind of business that man has been in all of
3 his life. How he is making a dollar, I still don't
4 know today.

5 Q. Well, you know what people say, don't you?

6 A. What I know about is what I read in the papers.
7 I don't care what people say. I don't listen to
8 all of that bullshit that people say.

9 Q. You do in fact associate with Mr. Joseph Fino on a
10 fairly regular basis; is that correct?

11 A. When I see him, I shake hands. I have coffee with
12 him. If he says, "Come here and have a bite to
13 eat," what's to that? Why should I be afraid to
14 accept a man's request to have a lunch or a dinner?

15 Q. You have been doing this for thirty years?

16 A. Yes. What's wrong with that?

17 Q. And, you say in the entire thirty years that you
18 have known this man and associated with him almost
19 on a daily basis, you have no idea whatsoever what
20 this man does for a living?

21 A. No.

22 Q. Not the slightest?

23 A. Truthfully speaking, no, I don't know. I have no

1 intentions ever of trying to find out how he makes
2 his living.

3 Q. Why is that?

4 A. Because it doesn't concern me. It is not my
5 business. It doesn't put food on my table. I am
6 working to put food on my table. He doesn't give
7 it to me.

8 Q. You have been working other places, haven't you?

9 A. Picking up a little action.

10 Q. For his brother?

11 A. Yes, for his brother.

12 Q. Did you ever have any conversations with Joseph
13 Fino about the action that his brother was accept-
14 ing from you? Now, Mr. Alberti, think carefully,
15 because you are under oath. The only way that you
16 can get into any trouble is if you lie under oath.
17 The oath says that you will tell the truth, the
18 whole truth and nothing but the truth; so, now,
19 think carefully.

20 A. Did I talk with Mr. Joseph Fino about me giving
21 action to his brother, Nick Fino?

22 Q. Yes.

23 A. Perhaps I did.

1 Q. All right. Tell us the first time that you talked
2 to Joseph Fino about his brother's bookmaking
3 activities?

4 A. The first time I talked to Joseph Fino?

5 Q. Isn't it true that you talked to Joseph Fino a good
6 deal about his brother's bookmaking activities?

7 A. No, I don't think so.

8 Q. Isn't it true that you talked to Joseph Fino when
9 you had a problem with Nick Fino?

10 A. I never had a problem.

11 Q. There are times that there are bets that are
12 disputed and things like that?

13 A. There was never no dispute between me and Rose Fino,
14 Joe Fino or Nick Fino. I never had to go to Joe to
15 talk about his brother, never, never.

16 Q. Are there times that you had disputes with your
17 customers?

18 A. No, never.

19 Q. You never had any problems with your customers?

20 A. No, never.

21 Q. You mean in thirty years of bookmaking, you never
22 had a problem with the people below you, the
23 betting customers, or the people above you, that is,

1 Joe Giallella, Joe Fino, Nick Fino or Rose Fino?

2 A. No, never had any problems with nobody. I never
3 had no problems with nobody.

4 Q. All right. However, throughout this period, you
5 have seen Joseph Fino on a fairly regular basis?

6 A. Yes. In fact, I seen him yesterday.

7 Q. You seen him yesterday?

8 A. Yes, and I probably will see him today if I get out.

9 Q. Where do you see him?

10 A. At the club. There is a club on Ferry and Grant
11 just like the Buffalo Athletic Club or the Catholic
12 Club on Delaware Avenue, I forget what the name of
13 it is, but like the Catholic Club on Delaware Avenue.

14 Q. Do you pay dues to belong to this club?

15 A. Every member pays a dollar or two dollars. You
16 give a dollar or two dollars. You pay as you go
17 along. When you win a pot, you give a dollar or two
18 dollars, half a dollar, that is how they pay the
19 rent.

20 Q. You say that a dollar or so comes out of the pot?

21 A. Whatever they want to give. They give a dollar,
22 two dollars, half a dollar. They play short cards.
23 They play rummy, gin rummy, tap rummy. They play

1 poker.

2 Q. Do they play some game called siginete?

3 A. Siginete?

4 Q. Yes, that is a high stakes card game.

5 A. Not necessarily, no.

6 Q. It isn't?

7 A. I haven't seen any game of siginete. Every time
8 I go in there, the doors are open. You can go in
9 there anytime. I go in there and have coffee,
10 watch TV like a lot of other people do.

11 Q. Isn't it true, Mr. Alberti, that there is a high
12 stake siginete game that is in operation at that
13 club almost twenty-four hours a day?

14 A. I have never seen one. I have never seen one, sir.
15 I don't recall ever seeing one.

16 Q. Now, Mr. Alberti?

17 A. Yes, Mr. Stewart, I have never seen one. I go to
18 work at 3:00 o'clock in the afternoon. I don't get
19 through until 1:00 o'clock in the morning.

20 Q. What do you do on the weekends?

21 A. I sleep until 10:00 o'clock and take my wife
22 shopping and go back to work. I don't know any-
23 thing about a high stake siginete game.

- 1 Q. You are over there all the time, aren't you?
- 2 A. I am a member. I know everybody that goes in there.
- 3 I work on construction. I am born and raised with
- 4 those people. I am going to go there until I die.
- 5 Q. Mr. Alberti, did you ever hear of an organization
- 6 that is referred to colloquially as the "Arm?"
- 7 A. No.
- 8 Q. You never heard of the "Arm?"
- 9 A. No.
- 10 Q. You have never heard of the "Arm" all of the years
- 11 you have lived in Buffalo?
- 12 A. No. I don't know anybody being the arm.
- 13 Q. We don't want to get hung up in words. Did you ever
- 14 hear of an organization called the "Mafia?"
- 15 A. Through the newspaper. I don't know about any
- 16 Mafia. Maybe you know more about the Mafia than
- 17 I do. All I know is what I read in the papers.
- 18 Q. The Mafia is sometimes called the Arm in Buffalo.
- 19 A. I don't know anything about the Arm.
- 20 Q. You never heard of anything like that?
- 21 A. No.
- 22 Q. Do you know if Joe Firo is a member of a criminal
- 23 organization called the Mafia?

1

A. I don't know.

2

Q. You never talked to him about that?

3

A. No, I never talked to him about that. I would not dare to talk to him what their affiliation is or how they make a dollar. It is not my business. It is not my business to ask them how they make a living. Do you think I want to get slapped in the face or kicked in the ass?

4

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Q. But you associate with them?

10

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14

Q. Are you a member of the Mafia?

15

16

17

Q. You are with him everyday?

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A. Mr. Stewart, you are putting words in my mouth.

1 We shake hands. We pass the time of day. We have
2 coffee. We do not do this everyday, but whenever
3 I run into him.

4 Q. That is everyday.

5 A. No, not everday.

6 Q. How about Mr. Bona outside, do you know him?

7 A. Yes, I have known him for a number of years.

8 Q. How long have you known him?

9 A. His father had a grocery store on Pennsylvania
10 and West Avenue. I used to shop there when I
11 lived on Plymouth and Pennsylvania.

12 Q. What does Mr. Bona do for a living?

13 A. I don't know.

14 Q. He is at the club everyday; isn't he?

15 A. I don't know if he is at the club everyday. I
16 don't know any activities that the man is in.

17 Q. He sells football pool tickets, doesn't he?

18 A. That is unbeknown to me.

19 Q. You have never seen him sell football pool tickets?

20 A. No.

21 Q. Does he have anything to do with the siginete game?

22 A. Not to my knowledge.

23 Q. Nothing to do whatsoever with the siginete game?

1 A. No, not to my knowledge.

2 Q. What is the percent that the house takes out of
3 the siginete game?

4 A. I don't know.

5 Q. Is it 5%?

6 A. I don't know.

7 Q. You don't know if it is 5%?

8 A. No.

9 Q. You don't know of any fixed percent that is taken
10 from the pot?

11 A. No, I don't know.

12 Q. You are sure of that?

13 A. Yes, I am positive.

14 Q. Have you ever been a dealer in that game?

15 A. No, never.

16 Q. Never?

17 A. No, never.

18 Q. Do you know who the dealers are?

19 A. No.

20 Q. How long have you known Danny Sansonese?

21 A. Thirty years. I may have met him in prison. I
22 don't remember though.

23 Q. Do you know what Danny Sansonese did for a living?

1 A. No, I don't know.

2 Q. Danny Sansonese was up at the club everyday, too,
3 wasn't he?

4 A. I don't know.

5 Q. He was a good friend of Joseph Fino, wasn't he?

6 A. What I read in the papers and occasionally I would
7 see them go out.

8 Q. Let's leave the papers out of this. I am just
9 talking about what you have seen or heard.

10 A. I think they are pretty good friends.

11 Q. Is Mr. Sansonese a member of the Mafia?

12 A. I don't know. I don't know what the hell he is a
13 member is. I wouldn't know. I don't know. I
14 wouldn't know anything about the Mafia. I don't
15 know anything about the Mafia. I don't know what
16 Mr. Sansonese belongs to.

17 Q. Are you a member of the Mafia, Mr. Alberti?

18 A. No. I don't know about them boys being a member
19 of the Mafia.

20 Q. You have never heard that Mr. Sansonese was a
21 member of the Mafia?

22 A. No, sir, unless it was in the newspapers. All I
23 know is what I read in the newspapers.

1 Q. Other than the newspaper?

2 A. No, that is all. That is the only time that I
3 heard that word, "Mafia," through the newspapers.
4 I guess Danny Sansonese was convicted of perjury
5 and that is all I know. All I know is what I read
6 in the newspapers.

7 Q. Did anybody ever tell you that Mr. Sansonese killed
8 people for a living?

9 A. No, never heard of it. I never heard of it.

10 Q. Never heard of it?

11 A. I don't believe it. I don't believe it. I have
12 never heard of it.

13 Q. Ever heard that he was the enforcer for the mob?

14 A. Just according to the newspapers, just what I read
15 in the newspapers.

16 Q. Up there at that club nobody ever talked about that?

17 A. No, never.

18 Q. Do you know Gaetano Micelli, Tommy Chooch?

19 A. Yes.

20 Q. How many years have you known Tommy Chooch?

21 A. A few years.

22 Q. Ten, twenty years?

23 A. Yes.

1 Q. What does Tommy Chooch do for a living?

2 A. He works for construction. He is an engineer.

3 I worked with him at the Bethlehem Steel Plant.

4 He was driving a truck. He's an engineer on a hi-
5 lift.

6 Q. Does Mr. Chooch also carry a gun?

7 A. I have never seen a gun in his pocket. I have
8 never seen him handle a gun in all of my life.

9 Q. Is Tommy Chooch a member of the Mafia?

10 A. I don't know anything about anybody being a member
11 of the Mafia.

12 Q. He is at the club everyday; isn't he?

13 A. I have seen him there a number of times. Like I
14 said before, Mr. Stewart, I am not at the club
15 everyday. I go to work at 3:00 o'clock.

16 Q. Mr. Alberti, are you acquainted with a gentleman
17 by the name of Sam Pieri?

18 A. Yes, I know him.

19 Q. How long have you known Sam Pieri?

20 A. Thirty, forty years.

21 Q. What does Mr. Pieri do for a living?

22 A. I don't know.

23 Q. Do you see him at the club everyday?

1 A. No, sir.

2 Q. Every other day?

3 A. No, sir.

4 Q. He is up there every once in a while?

5 A. I see him once in a while.

6 Q. It is his club, Mr. Alberti, isn't it?

7 A. Pardon me?

8 Q. He is the boss of the club now; isn't he?

9 A. I don't know.

10 Q. Who is the boss of the club?

11 A. I couldn't tell you who's the boss. Why does it
12 concern me? I don't know who's the boss of the
13 club.

14 Q. You pay dues?

15 A. I don't pay no dues.

16 Q. Are you an honorary member?

17 A. I don't know. The doors are wide open. There are
18 no dues. Anybody can walk in. You could even walk
19 in. There is doughnuts and coffee. There is
20 balogna, cold cuts in the icebox. I help myself
21 and have a sandwich. Everybody that goes in there
22 can do the same thing.

23 Q. Who pays for it?

1 A. It comes out of the boys' generosity, whatever
2 they give, whatever they want to give. When they
3 play poker, rummy, tap rummy, it comes out of their
4 pot.

5 Q. Do you know Pasquale Politano?

6 A. Yes.

7 Q. How long have you known Mr. Politano?

8 A. A number of years.

9 Q. Twenty years?

10 A. Maybe.

11 Q. Thirty years?

12 A. Maybe twenty years, give or take a few years.

13 Q. What does Mr. Politano do for a living?

14 A. I don't know. I knew him to have a saloon on
15 Allen Street. His mother or father had a lot of
16 money. They had a saloon. That is all I know the
17 man, when he was in the saloon business. It is
18 his other activities I don't know.

19 Q. He is an arsonist; isn't he, Mr. Alberti?

20 A. I don't know.

21 Q. Did you ever hear anybody say, "If you want your
22 place burned down, call Pat Politano?"

23 A. Never heard of it.

1 Q. Never heard of it?

2 A. No.

3 Q. A lot of burglars or thieves go to that club,
4 don't they, Mr. Alberti?

5 A. I don't know who are burglars or thieves or
6 arsonists.

7 Q. Are there people that sell items like TV's,
8 clothing, items at reduced prices at the club?

9 A. Never seen one.

10 Q. Never seen one?

11 A. No.

12 Q. You have never picked up a bargain or seen a
13 bargain at the club?

14 A. No. My wife would throw me out of the house if I
15 ever came home with anything that was illegal,
16 bought illegally or bought illegitimately.

17 Q. Not yourself, but did you ever see any of the men
18 come into the club with things like television sets,
19 clothing, that they were offering for sale to the
20 other members of the club at a very reduced rate?

21 A. No.

22 Q. Do you know what I mean?

23 A. Yes, but I have never seen anybody selling anything.

1 Q. Nothing at all like that?

2 A. No, not one item.

3 Q. Jewelry?

4 A. No.

5 Q. Diamond rings?

6 A. No.

7 Q. A thousand-dollar diamond ring for ninty dollars?

8 A. No.

9 Q. Never anything like that?

10 A. No.

11 Q. Do you know Billy Sciolino?

12 A. Yes.

13 Q. How long have you known Billy Sciolino?

14 A. Not too many years. The only thing that I know
15 of him, he is the car dealer, the Chrysler-Plymouth
16 dealer where I bought the last two cars.

17 Q. That is his brother now.

18 A. Billy Sciolino works there selling cars.

19 Q. He was the vice-president at one time?

20 A. I don't know what title he had.

21 Q. Did you ever know him to be a member of the Mafia?

22 A. No.

23 Q. Did you ever hear that he killed people for a

1 living?

2 A. No, never heard of it.

3 Q. Did you ever know him to carry a gun?

4 A. Never seen a gun in his possession. I never seen
5 him carry a gun.

6 Q. He comes to the club all of the time, doesn't he?

7 A. He comes to the club occasionally, now and then.
8 They have a club on Connecticut Street. I go there
9 to have a doughnut and coffee or a sandwich, too.

10 Q. What is the club on Connecticut Street called?

11 A. I don't know. Everytime I go in there, the doors
12 are open.

13 Q. You don't pay any dues?

14 A. No, I don't pay any dues.

15 Q. Does Mr. Pieri have that club, too?

16 A. I don't know.

17 Q. What is the difference between the club on
18 Connecticut Street and the club on West Ferry?

19 A. They are run about the same way, I guess. I just
20 sit down and play checkers, watch TV, have coffee,
21 have a doughnut, have a sandwich. It is run about
22 the same way, I guess.

23 Q. Is there a siginete game on Connecticut Street, too?

1 A. I never seen a signnate game on Connecticut.

2 Q. You have never seen one on Connecticut?

3 A. No, never seen one.

4 Q. And, you say that you don't know who runs it?

5 A. No, I don't know.

6 Q. You don't know if Mr. Pieri has any connection
7 with it?

8 A. No, I don't know.

9 Q. Do you see Mr. Pieri around that one on Connecticut
10 Street?

11 A. If I seen Mr. Pieri once or twice in the last two
12 or three years, I think that that is a lot.

13 Q. Did anyone tell you since Mr. Pieri got out of jail
14 that he's taken control of both of those clubs
15 and that the people that actually operate the clubs
16 from day to day give Mr. Pieri a cut of the pro-
17 ceeds from those clubs?

18 A. Never heard that.

19 Q. Never heard that?

20 A. No, nobody ever spoke to me about anybody.

21 Q. Never heard that?

22 A. Why should anybody speak to me? I got no
23 affiliation with any of those people. Why should

1 they tell me? Do you think I am stupid enough to
2 ask? Do you think I want to get my face slapped
3 or my ass kicked?

4 Q. I suppose the reason we were a bit curious about
5 it, because you have been associating with those
6 people for thirty, forty years.

7 A. I know them as good people, fine people, gentlemen,
8 that is all I know about them. Where they go after
9 I say my hellos to them, I don't know. God bless
10 them, wherever they go they go. Whatever they do,
11 I know nothing about it. I know nothing about them.

12 Q. By the way, Mr. Alberti, after your arrest in May
13 of 1971, that is the matter that you were convicted
14 of, did you keep on bookmaking?

15 A. Not one cent worth.

16 Q. Not one cent worth?

17 A. No.

18 Q. Not even for some of your old, trusted customers?

19 A. I don't know where they went to. I did not do one
20 cent of bookmaking since then. If I called any-
21 thing in after the conviction or anything that
22 was my bets.

23 Q. That is what you said before about all of the stuff

- 1 that you were turning in to Rose.
- 2 A. Before the conviction, whatever action I called in,
3 I called in to Nick or Rose.
- 4 Q. What about afterwards?
- 5 A. I did not contact one player after the conviction.
6 Everything I called in was my own personal bets.
- 7 Q. Did you know John Cammaleri?
- 8 A. Yes.
- 9 Q. How long have you known him?
- 10 A. I was raised with him on Canal Street.
- 11 Q. Who was it that killed Mr. Cammaleri?
- 12 A. That is a good question: Who killed John Cammaleri?
13 I am supposed to know who killed John Cammaleri?
- 14 Q. Do you know who killed John Cammaleri?
- 15 A. No.
- 16 Q. Have you heard any of the people at the club since
17 the death of Mr. Cammaleri in May of 1974, Mr.
18 Alberti, have you heard any of these people at any
19 one of these two clubs, either on Connecticut
20 Street or the one on West Ferry, discuss the murder
21 of John V. Cammaleri?
- 22 A. Never heard one word about it.
- 23 Q. It is not a topic of conversation at the clubs?

1 A. I have never heard one word about the murder of
2 John Cammaleri since he's been dead.

3 Q. How about the murder of Albert Billiteri, Jr.?

4 A. I knew him as a baby. I had him on my lap when he
5 was a baby twenty-two, twenty-three years back. I
6 know his father.

7 Q. He is in prison for loansharking?

8 A. Yes.

9 Q. Do you know who murdered Albert Billiteri, Jr.?

10 A. No.

11 Q. Have you heard any of the people at the clubs talk
12 about the murder of Albert Billiteri, Jr.?

13 A. No, not one word.

14 Q. Did you know Frank D'Angelo?

15 A. No.

16 Q. You didn't know him at all?

17 A. No, never seen the man.

18 Q. Do you know Joe DiCarlo?

19 A. Yes.

20 Q. How long have you known Joe DiCarlo?

21 A. Fifty years, probably. I sold papers to him. I
22 bet it goes back fifty-five years ago.

23 Q. Were you ever associated with Mr. DiCarlo in any

1 business ventures?

2 A. No, never.

3 Q. Do you know what Mr. DiCarlo did for a living?

4 A. No, I don't.

5 Q. Never had any business dealings with Mr. DiCarlo?

6 A. No, not one cent worth.

7 Q. Do you know Joe Zito?

8 A. No, I don't know him. I heard about him in the
9 papers. He is a fellow from Rochester. I guess he
10 testified for the State or something, for the
11 Government.

12 Q. You never ran into him?

13 A. No.

14 Q. You never ran into him?

15 A. No, I wouldn't even know him if I seen him.

16 Q. He says that he is a member of the Mafia?

17 A. That I don't know. I don't know what Mafia means
18 and who is in the Mafia.

19 Q. He says that all of the people that I have been
20 asking you about are members of the Mafia.

21 A. I don't know anything about it.

22 Q. You don't know anything about that?

23 A. No, I don't know anything about that.

1 Q. Is Joey Giallalla a good friend of yours?

2 A. Yes.

3 Q. Is he a member of the Mafia?

4 A. I don't know what Mafia? Are you talking about
5 the shoeshine Mafia or the newspaper Mafia?

6 Q. I am talking about the Arm?

7 A. He is nobody. He hasn't got two cents like I
8 haven't got two cents. He's probably on relief or
9 something.

10 Q. You are positive that he is not a member of the Arm?

11 A. I am positive that he is no member of any arm.
12 He is no Mafia or no nobody.

13 Q. Can you please tell us who are the members of the
14 Arm?

15 A. I don't know any Arm. I don't know who are the
16 members of the Arm, Mafia or strongarm, not one man,
17 not one man.

18 Q. You don't know what any of the gentlemen do that
19 we have been talking about for a living?

20 A. No.

21 Q. Aside from Mr. Chooch?

22 A. No. I never would want to find out what they do
23 for a living.

1 Q. Why's that?

2 A. Because it doesn't concern me, Mr. Stewart. It
3 hasn't got anything to do with supporting me. It
4 doesn't support me, my wife or my children, how
5 they make a living. It doesn't concern me how any
6 of these people make a living.

7 Q. Don't you get a bit apprehensive being at these
8 clubs where all of these people with criminal
9 convictions are hanging around?

10 A. Those are the only people that I know in my life.
11 I was raised with them. Until I die, I am going
12 to know them, recognize them out in the street or
13 anywheres.

14 Q. Mr. Alberti, do you want these ladies and gentlemen
15 seated around this table to believe seriously that
16 you grew up with all of these people, that you have
17 known them all for twenty, thirty, forty, fifty
18 years or longer, that you see these people everyday
19 of the week and that you haven't got the slightest
20 idea in the world what these people do for a living?

21 A. I swear on my mother's grave and on my children
22 that I do not know what they do for a living.

23 Q. I am not talking about direct knowledge where Joe

1 Fino comes to you and says, "Listen, Nick, I am a
2 member of the Mafia. I am the boss of the Mafia."
3 I don't mean just that. I mean what is known, what
4 people know, because of hearsay, not newspapers,
5 but hearsay from conversations and from growing up
6 in that environment. You are telling me that you
7 don't know anything?

8 A. Truthfully, I can tell you, yes. I will take an
9 oath. I will swear on that until my dying day.
10 I will swear that I don't know.

11 Q. Just because you say that you don't want to see any
12 evil, that doesn't stop evil from coming to you,
13 Mr. Alberti.

14 A. Anybody that wants to make a living anyway, God
15 bless them, more power to them. I don't care. It
16 doesn't concern me. It doesn't put food on my
17 table. It is not my business.

18 MR. STEWART: Mr. Foreman, do you or any of the
19 ladies and gentlemen of the Grand
20 Jury have any questions?

21 GRAND JUROR: You say that the bets that you
22 placed were your bets?

23 THE WITNESS: Yes.

1 GRAND JUROR: Well, did anybody contact you to
2 place their bets?

3 THE WITNESS: Since when?

4 GRAND JUROR: That was your latest statement.

5 THE WITNESS: My latest statement since I got
6 convicted, those were my own bets.

7 GRAND JUROR: Nobody has contacted you?

8 THE WITNESS: No, nobody has contacted me. No-
9 body has contacted me at all.

10 GRAND JUROR: These two clubs that you refer to,
11 do they have a bar, a licensed bar?

12 THE WITNESS: No, they don't. They have a charter
13 from Albany or someplace.

14 GRAND JUROR: They do have a charter?

15 THE WITNESS: Yes, just like the Buffalo Athletic
16 Club or this Catholic Club here on
17 Delaware Avenue.

18 GRAND JUROR: Mr. Alberti, you belong to these
19 clubs and everyday you go there and
20 meet your friends and you are trying
21 to tell me that when one of your
22 members gets killed brutally, no-
23 body has talked about it, nobody

1 said, "What happened?" "Who killed
2 him?" There has been no discussion
3 at all?

4 THE WITNESS: They don't know any more than you
5 do.

6 GRAND JUROR: Well, at work we discussed the kill-
7 ing.

8 THE WITNESS: You discussed the killing because
9 you read it in the newspapers.

10 GRAND JUROR: But he was your friend?

11 THE WITNESS: We discussed it, what we read in
12 the newspaper.

13 GRAND JUROR: He was your friend and nobody said,
14 "Gee, something is wrong? What
15 happened?"

16 THE WITNESS: Why should I go out and discover
17 who killed him?

18 GRAND JUROR: That is not what I asked you.
19 Wasn't it discussed at all at the
20 club?

21 THE WITNESS: Yes, I heard in the club that they
22 killed Albert Billiteri.

23 GRAND JUROR: What about Mr. Cammaleri?

1 THE WITNESS: It was in the newspaper.
2 GRAND JUROR: Did the people in the club discuss
3 it?
4 THE WITNESS: No, no big conversation.
5 GRAND JUROR: You mean something really bad
6 happens to a member and nobody dis-
7 cusses it?
8 THE WITNESS: No.
9 GRAND JUROR: I don't believe it!
10 THE WITNESS: I am telling you the facts, ma'am.
11 Nobody discussed it. If you like
12 to gossip, you can gossip.
13 GRAND JUROR: No, not gossip. If this gentleman
14 seated next to me didn't show up,
15 we would all wonder why he didn't
16 show up.
17 THE WITNESS: We all know just what we read in
18 the newspapers. We read it in the
19 newspapers. We read that he was
20 killed. Do you think we are going
21 to try to find out who killed him,
22 for what purpose? We read it in the
23 paper. We go for it. We read it

1 in the papers and we go for it. If
2 we want to believe it, we believe it.
3 GRAND JUROR: Sir, may I ask you one question:
4 Were the members afraid to bring up
5 a discussion like this in the case
6 of a murder or death of one of their
7 members, was there fear to do this?
8 THE WITNESS: No.
9 GRAND JUROR: Were you afraid to discuss it?
10 THE WITNESS: No, not afraid, no. I have nothing
11 to be afraid of. I have no fear.
12 I have nothing to be afraid of.
13 GRAND JUROR: Did any of the other members have
14 anything to be afraid of in dis-
15 cussing it?
16 THE WITNESS: No.
17 GRAND JUROR: Why wasn't it discussed in a normal
18 manner like it was discussed here
19 or like we discussed it at work,
20 discussed openly and freely?
21 THE WITNESS: I don't know.
22 GRAND JUROR: There was no fear?
23 THE WITNESS: No, no fear.

1 BY MR. STEWART:

2
3 Q. Mr. Alberti, are you familiar with the "six for
4 five racket?"

5 A. No.

6 Q. Loansharking?

7 A. No.

8 Q. Did you know that Mr. Billiteri, Sr. was a loan-
9 shark?

10 A. Through the newspapers he was convicted of that
11 and that is all I know.

12 Q. You never knew him to loan money?

13 A. No, never.

14 Q. In your association with the people at the club
15 on West Ferry and the club on Connecticut Street,
16 the two clubs going now, does anybody at either of
17 those two clubs loan money out, short term loans?

18 A. Never seen a person loan money to anybody, whether
19 it is six for five or even up or what, I have
20 never seen anybody loan any money to anybody. I
21 have never seen anybody loan any money.

22 Q. Does the house loan any money?

23 A. I have never seen anybody loan any money.

1 MR. STEWART:

Are there any further questions?

2 GRAND JUROR:

Mr. Alberti, do you own any guns?

3 THE WITNESS:

Never owned a gun in my life.

4 GRAND JUROR:

5 You don't keep any guns in your
home?

6 THE WITNESS:

7 The only thing we have at home are
8 kitchen knives, the knives that my
9 wife uses for the kitchen, kitchen
10 utensils. I never even carried a
penknife.

11 MR. STEWART:

12 Mr. Alberti, if you told the truth
13 here today, do you think that some-
body would have you killed?

14 THE WITNESS:

I have told the truth.

15 MR. STEWART:

Anything else?

16
17 (No response)

18
19 MR. STEWART:

You are excused for the time being.

20
21 (Witness excused)

22
23 * * *

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-VS-

NICHOLAS ALBERTI

NOVEMBER 1974 SESSION ~~Term~~

Convened Jan. 21, 1975

No. CR - 75 - 40

Viol. 18 U.S.C. Section 1623
(False Declarations)

Filed: 2/12/75

COUNT I

The Grand Jury charges:

That on or about the 16th day of October, 1974 in the Western District of New York, NICHOLAS ALBERTI the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly empaneled and sworn in the United States Court for the Western District of New York, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into alleged violations of Sections 1955 and 1962 of Title 18 of the United States Code, relating to illegal gambling, racketeering activity and other offenses against the United States of America;

2. It was material to the aforesaid investigation to determine whether such violations had occurred at a premises known as "Nairy's Social Club" located at 314 West Ferry Street, Buffalo, New York.

3. At the time and place hereinabove specified in paragraph one, NICHOLAS ALBERTI appeared as a witness before said Grand Jury and then and there being under oath, testified falsely before the said Grand Jury with respect to the said material matters as follows:

Q. Where do you see him?

A. At the club. There is a club on Ferry and Grant just like the Buffalo Athletic Club or the Catholic Club on Delaware Avenue, I forget what the name of it is, but like the Catholic Club on Delaware Avenue.

Q. Do you pay dues to belong to this club?

A. Every member pays a dollar or two dollars. You give a dollar or two dollars. You pay as you go along. When you win a pot, you give a dollar or two dollars, half a dollar, that is how they pay the rent.

Q. You say that a dollar or so comes out of the pot?

A. Whatever they want to give. They give a dollar, two dollars, half a dollar. They play short cards. They play rummy, gin rummy, tap rummy. They play poker.

Q. Do they play some game called siginete?

A. Siginete?

Q. Yes, that is a high stakes card game.

A. Not necessarily, no.

Q. It isn't?

A. I haven't seen any game of siginete. Every time I go in there, the doors are open. You can go in there anytime. I go in there and have coffee, watch TV like a lot of other people do.

Q. Isn't it true, Mr. Alberti, that there is a high stake siginete game that is in operation at that club almost twenty-four hours a day?

A. I have never seen one. I have never seen one, sir. I don't recall ever seeing one.

* * *

Q. What does Mr. Bona do for a living?

A. I don't know.

p. He is at the club everyday; isn't he?

- ~~A.~~ I don't know if he is at the club everyday. I don't know any activities that the man is in.
- ~~Q.~~ He sells football pool tickets, doesn't he?
- ~~A.~~ That is unbeknown to me.
- ~~Q.~~ You have never seen him sell football pool tickets?
- ~~A.~~ No.
- Q. Does he have anything to do with the siginete game?
- A. Not to my knowledge.
- Q. Nothing to do whatsoever with the siginete game?
- A. No, not to my knowledge.
- Q. What is the percent that the house takes out of the siginete game?
- A. I don't know.
- Q. Is it 5%?
- A. I don't know.
- Q. You don't know if it is 5%?
- A. No.
- Q. You don't know of any fixed percent that is taken from the pot?
- A. No, I don't know.
- Q. You are sure of that?
- A. Yes, I am positive.
- Q. Have you ever been a dealer in that game?
- A. No, never.
- Q. Never?
- A. No, never.
- Q. Do you know who the dealers are?
- A. No.

4. The aforesaid testimony of NICHOLAS ALBERTI, as he then and there well knew and believed, was not true in that he had knowledge of the existence of a ziganette game and of the participants therein at "Nairy's Social Club" at 314 West Ferry Street, Buffalo, New York.

All of the above in violation of Title 18, United States Code,
Section 1623.

Richard J. Arcara

RICHARD J. ARCARA
United States Attorney
Western District of New York

A TRUE BILL:

John P. Clinton
Foreman

No. CR - 75 - 391

UNITED STATES DISTRICT COURT
WESTERN District of NEW YORK

~~RECEIVED~~

THE UNITED STATES OF AMERICA

vs.

NICHOLAS ALBERTI

INDICTMENT

A true bill;

John A. Chittum
Foreman.

Filed in open court this _____ day
of _____, A. D. 19__

Clerk.

Bail, \$ _____

54
FILED
FEB 12 3 50 PM '75
U.S. DISTRICT COURT
W.D. OF N.Y.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

NICHOLAS ALBERTI

CR. NO. 1975-40

APPLICATION AND ORDER REGARDING
"SURPLUSAGE" IN DEFENDANT'S INDICTMENT

THE UNITED STATES OF AMERICA, by and through its attorneys, Richard J. Arcara, United States Attorney for the Western District of New York, and Edward H. Siddens, Department of Justice Attorney, hereby makes application for a written order in accordance with the Court's oral direction of January 9, 1976, to strike certain of the Defendant's Grand Jury testimony from the body of the indictment in the above-captioned case on the ground that such testimony is "surplusage".

As the basis for this application, the Government sets forth the following facts and circumstances, to wit:

1. By Notice of Motion and supporting Affidavit dated September 8, 1975, the Defendant moved this Court to strike certain language from the body of his indictment on the ground that said language was "surplusage".
2. After the submission of the aforementioned motion of the Defendant, the "Government's Response to Defendant's Motions to Dismiss the Indictment and to Strike Surplusage" was thereafter filed and dated October 3, 1975.
3. Oral argument on the aforementioned motion was heard by this Court on October 14, 1975, and on January 9, 1976.

4. On January 9, 1976, the Court orally directed that certain language regarding "football pool tickets" be stricken from the Defendant's indictment as "surplusage". Counsel for the Government and for the Defendant were directed to meet and agree, if possible, as to precisely which language should be removed. Counsel were further directed to prepare an order for the Court which directed the removal of the specific language from the Defendant's indictment.

5. Counsel for the Defendant and for the Government did meet on January 9, 1976, and have agreed that the following Grand Jury testimony of the Defendant should be stricken from page 3 of the indictment:

- Q. He sells football pool tickets, doesn't he?
A. That is unbeknown to me.
Q. You have never seen him sell football pool tickets?
A. No.

6. In accordance with the foregoing, attached hereto and made a part hereof is a retyped "clean" version of the Defendant's indictment which omits the language which the Court ordered and which counsel agreed should be disregarded. This manner of deleting the "surplusage" material follows the suggestion of the Court of Appeals for the Second Circuit in United States v. Cirami, 510 F.2d 69, 74 (2d Cir.), cert. denied, 95 S.Ct. 1952 (1975).

7. Counsel for the Defendant has agreed that the retyped version of the Defendant's indictment which is attached hereto will be utilized in the trial of the above-captioned case.

WHEREFORE, counsel for the Defendant and for the Government being in agreement with foregoing recitation contained in this Application, the Court is respectfully requested to order that the afore-specified language be stricken from the Defendant's indictment

and that the retyped version which is attached hereto be presented to the jury in the trial of the above-captioned case.

Respectfully submitted,

RICHARD J. ARCARA
UNITED STATES ATTORNEY
WESTERN DISTRICT OF NEW YORK

BY: Edward H. Siddens
EDWARD H. SIDDENS
Department of Justice Attorney

DATED: February 4, 1976
AT: Buffalo, New York

*

*

*

IT IS SO ORDERED.

DATED: February 6, 1976
AT: Buffalo, New York

John T. Austin
UNITED STATES DISTRICT JUDGE

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-VS-

NICHOLAS ALBERTI

NOVEMBER 1974 SESSION

Convened Jan. 21, 1975

No. C R - 75 - 40

Vio. 18 U.S.C. Section 1623
(False Declarations)

Filed: 2/12/75

COUNT I

The Grand Jury charges:

That on or about the 16th day of October, 1974 in the Western District of New York, NICHOLAS ALBERTI the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly empaneled and sworn in the United States Court for the Western District of New York, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into alleged violations of Sections 1955 and 1962 of Title 18 of the United States Code, relating to illegal gambling, racketeering activity and other offenses against the United States of America;

2. It was material to the aforesaid investigation to determine whether such violations had occurred at a premises known as "Nairy's Social Club" located at 314 West Ferry Street, Buffalo, New York.

3. At the time and place hereinabove specified in paragraph one, NICHOLAS ALBERTI appeared as a witness before said Grand Jury and then and there being under oath, testified falsely before the said Grand Jury with respect to the said material matters as follows:

Q. Where do you see him?

A. At the club. There is a club on Ferry and Grant just like the Buffalo Athletic Club or the Catholic Club on Delaware Avenue, I forget what the name of it is, but like the Catholic Club on Delaware Avenue.

Q. Do you pay dues to belong to this club?

A. Every member pays a dollar or two dollars. You give a dollar or two dollars. You pay as you go along. When you win a pot, you give a dollar or two dollars, half a dollar, that is how they pay the rent.

Q. You say that a dollar or so comes out of the pot?

A. Whatever they want to give. They give a dollar, two dollars, half a dollar. They play short cards. They play rummy, gin rummy, tap rummy. They play poker.

Q. Do they play some game called siginete?

A. Siginete?

Q. Yes, that is a high stakes card game.

A. Not necessarily, no.

Q. It isn't?

A. I haven't seen any game of siginete. Every time I go in there, the doors are open. You can go in there anytime. I go in there and have coffee, watch TV like a lot of other people do.

Q. Isn't it true, Mr. Alberti, that there is a high stake siginete game that is in operation at that club almost twenty-four hours a day?

A. I have never seen one. I have never seen one, sir. I don't recall ever seeing one.

* * *

Q. What does Mr. Bona do for a living?

A. I don't know.

Q. He is at the club everyday; isn't he?

A. I don't know if he is at the club everyday. I don't know any activities that the man is in.

* * *

Q. Does he have anything to do with the siginete game?

A. Not to my knowledge.

Q. Nothing to do whatsoever with the siginete game?

A. No, not to my knowledge.

Q. What is the percent that the house takes out of the siginete game?

A. I don't know.

Q. Is it 5%?

A. I don't know.

Q. You don't know if it is 5%?

A. No.

Q. You don't know of any fixed percent that is taken from the pot?

A. No, I don't know.

Q. You are sure of that?

A. Yes, I am positive.

Q. Have you ever been a dealer in that game?

A. No, never.

Q. Never?

A. No, never.

Q. Do you know who the dealers are?

A. No.

4. The aforesaid testimony of NICHOLAS ALBERTI, as he then and there well knew and believed, was not true in that he had knowledge of the existence of a ziganette game and of the participants therein at "Nairy's Social Club" at 314 West Ferry Street, Buffalo, New York.

All of the above in violation of Title 18, United States
Code, Section 1623.

/s/ Richard J. Arcara
RICHARD J. ARCARA
United States Attorney
Western District of New York

A TRUE BILL:

/s/ John R. Chatman
FOREMAN

Form DJ-195
(Ed. 2-7-66)

No. CR-75-391

UNITED STATES DISTRICT COURT
WESTERN District of NEW YORK

~~Division~~

THE UNITED STATES OF AMERICA
vs.
NICHOLAS ALBERTI

INDICTMENT

A true bill;

John A. Chetani
Foreman.

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bail, \$ _____

GPO 901-482

FILED

FEB 12 3 50 PM '75

U.S. DISTRICT COURT
W.D. OF N.Y.

TAB 6
12

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-75-40

NICHOLAS ALBERTI,

Defendant

ORDER
~~RECEIVED~~

CURTIN, DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-75-40

NICHOLAS ALBERTI,

Defendant

APPEARANCES: RICHARD J. ARCARA, ESQ.
United States Attorney
(JAMES W. GRESENS, ESQ., Department of
Justice Attorney, of Counsel)
Buffalo, New York, for the Government.

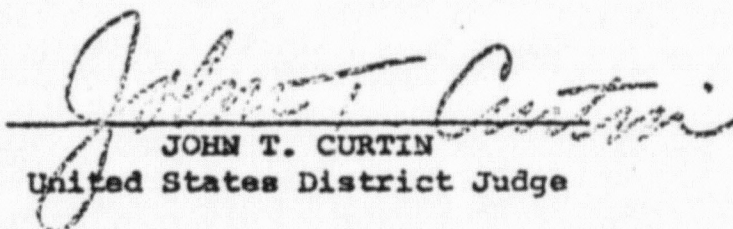
BRIAN F. TOOHEY, ESQ., Buffalo, New
York, for the Defendant.

Pending before the court is an unusual motion. The defendant has been indicted for a violation of 18 U.S.C. §1623, for making false statements before the grand jury. The Government charges that his testimony was false because he had knowledge of the existence of a ziganette game and of the participants in it at Nairy's Social Club in Buffalo, New York. A reading of the grand jury testimony fails to reveal any reference whatever to a game called ziganette. However, there are several

references to a game called siginete. The Government explains that siginete and ziganette are one and the same and the difference is one of spelling only. Upon hearing the word "ziganette" the reporter, relying on phonics, spelled it "siginete." The Government urges that whether the defendant understood the question and answered it falsely is a question of fact for the jury.

During the oral argument of this motion, I expressed reservations of the Government's position. The game of ziganette or siginete, however it is spelled, was not described during the grand jury inquiry. Nevertheless, the indictment is sufficient to charge the defendant with the crime under this section. Therefore, I will deny the defendant's motion to dismiss. The case is placed on the trial calendar.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: February 24, 1976

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

EXHIBIT C

3 * * * * *

4 THE UNITED STATES

5 -v-

CRIMINAL DOCKET
NO. 1975-40

6 NICHOLAS ALBERTI,

7 Defendant.

8 * * * * *

9
10 Excerpts from Proceedings of Trial held before the HON.

11 JOHN T. CURTIN, United States District Judge, in Part I,

12 United States Court House, Buffalo, New York, on June 14, 1976.

13
14 APPEARANCES:

RICHARD J. ARCARA, United States
Attorney, by EDWARD SIDDENS, Esq.,
Attorney, United States Department of
Justice.

16
17 BRIAN TOOHEY, Esq., Attorney for the
18 defendant.
19
20
21
22
23
24
25

1 PROCEEDINGS: June 14, 1976, 11:05 A.M.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury not present.)

5 THE COURT: In United States vs. Albert,
6 Criminal 1975-40, Mr. Toohey.

7 MR. TOOHEY: Your Honor, before the jurors come
8 down I don't know if your Honor saw the
9 Buffalo Evening News on Friday, Friday
10 evening's edition, but there were several
11 articles, one of which discussed this
12 case directly as far as the testimony
13 and I guess that is fair game, your
14 Honor, but then there was another
15 article on the second front page which
16 dealt with the release of Mr. Pieri
17 from Federal prison, and lo and behold
18 there is reference to Mr. Alberti and
19 his trial and it says that the jury was
20 going to be charged that day and we
21 know it was not and I would like to
22 offer the two articles as Court Exhibits
23 and ask with regard to the one about
24 Mr. Pieri I think there is distinct
25 severe possibility of severe damage to

1 my client's case. It refers to him as
2 a minor organized crime figure and the
3 only other, - excuse me, not the only
4 other, - he, Mr. Pieri and Mr. Randacio.
5 Frederico and Victor Randacio are
6 mentioned in the same article. I think
7 it was grossly unfair. The timing is
8 the thing that disturbs me, your Honor.
9 You have the jury after summations but
10 before charge, out for the weekend with
11 this article circulating. It is
12 entitled, "Pieri, refuted Mafia boss
13 ends Federal jail term", and it just,
14 it scares me, Your Honor. I think it
15 would be appropriate to have - - -

16 THE COURT:

Let me look at it.

17 MR. TOOHEY:

All right. I am sorry.

18 THE COURT:

19 I believe in the First Amendment,
20 the freedom of the press but it just
21 seems to be so silly. I don't know
22 where they would ever get Mr. Alberti.
23 It shows that English is at the point
24 you made during summation, about
25 language is slippery, "minor organized
crime figure". Well, we heard the

1 testimony that Mr. Alberti was the
2 fellow that provided coffee, sandwiches
3 and cigarettes, so if that equals minor
4 organized crime figure, - well, what
5 do you suggest we do on this, Mr.
6 Siddens?

7 MR. SIDDENS:

Your Honor, I am not sure. I had
3 nothing to do with the articles getting
9 in the paper.

10 THE COURT:

I know that.

11 MR. SIDDENS:

12 Maybe we should ask the jury. The
13 Court instructed them Friday that they
14 shouldn't look at any newspaper
15 articles, they shouldn't read any
16 stories about the case and maybe just
17 a question if they have read any news-
18 paper articles regarding the defendant
19 and if the answer is "no" to that we
20 can go ahead and if the answer is
21 "yes" maybe we ought to question
individually further at that point.

22 MR. TOOHEY:

I think additional voir dire on
23 this would be appropriate, your Honor.

24 THE COURT:

25 How can I conduct it? If I ask
them if they read the article about

1 Mr. Pieri then - - -

2 MR. TOOHEY: Well, I don't know whether it is
3 appropriate to move for a mistrial
4 based on the timing of the article - - -

5 THE COURT: I will deny the motion for a
6 mistrial.

7 MR. TOOHEY: Then I would ask for a specific
8 instruction, your Honor, that if any
9 newspaper articles, if they did see
10 them, although they have been instructed
11 not to read them, but we all know what
12 human nature is, that people have
13 families, have friends, people know
14 what kind of a case they are sitting
15 on; that it be made absolutely clear
16 that any reference in the newspaper is
17 not evidence in this case and it is
18 unfair to Mr. Alberti to consider such
19 a thing, that the article is unfair.
20 I think it is a torpedo. I left here
21 Friday thinking we had made some
22 progress but when I saw that it
23 ruined my evening, your Honor.

24 THE COURT: All right. I will ask them if
25 they have read any newspaper articles
about this case or about Mr. Alberti

1 and then if the answer is "no" I will
2 proceed to the charge but again
3 emphasize that they are to make up
4 their mind in this case based upon only
5 the evidence. Have the jury come up,
6 please.

7 MR. SIDDENS:

Your Honor, could I have one more
8 thing? When the jury goes downstairs
9 I would like to send with them instead
10 of the original indictment, as the
11 Court will remember, you struck certain
12 surplusage out.

13 THE COURT:

Court Exhibit No. 1 is, - that
14 is the redacted form?

15 MR. TOOHEY:

Yes, your Honor.

16 MR. SIDDENS:

Yes, and I would like to send that
17 down in place of the original indictment.

18 THE COURT:

I suppose that is right.

19 MR. TOOHEY:

Certainly. I don't want the
20 original going down.

21 MR. SIDDENS:

I didn't want a problem arising.

22 THE COURT:

Mr. Siddens and Mr. Toohey, Mr.
23 White explains we have a mystery with
24 Juror No. 2.

25 THE CLERK:

Alternate No. 2.

1 THE COURT:

Alternate No. 2, Phillip Lloyd
2 rode in with one of the other jurors
3 from Lockport and she dropped him in the
4 parking ramp and she is here but he is
5 not.

6 THE CLERK:

That was about 20 minutes ago,
7 Judge.

8 THE COURT:

I thought maybe what we would do
9 is wait five minutes and then go ahead.
10 I would think we would probably have
11 the charge right away because we are
12 going to excuse the alternate jurors
13 after the charge anyway.

14 MR. SIDDENS:

Then we would still have one in
15 case some would happen in the inter-
16 vening half hour.

17 THE COURT:

Is that agreeable?

18 MR. TOOHEY:

Yes, your Honor.

19 THE COURT:

Mr. White, call the jury.

20

21

(Jury returns to the Court Room at
22 11:28 A.M.)

23

24

THE COURT:

25

Mr. Hoffarth, as I understand it
that Alternate Juror No. 2, although

1 travelling into Buffalo he did not come
2 into the jury room.

3 DEPUTY U.S. MARSHAL HOFFARTH: That is my understanding,
4 Judge.

5 THE COURT: I have talked to both lawyers and
6 they both agree with me that we should
7 go ahead with those 13 of you who are
8 here. It is the practice that after
9 we finish with the charge that we would
10 excuse the alternate jurors in any
11 event so it seems to me at this late
12 date nothing is saved by waiting for
13 the alternate juror to come back. In
14 any event, ladies and gentlemen, we
15 are now at the close of this case and
16 we are ready for the charge and have
17 it submitted to you for your consider-
18 ation.

19 As I said to you in the very
20 beginning it is most important in a
21 criminal trial such as this or any
22 trial - - -

23 DEPUTY U.S. MARSHAL HOFFARTH: Judge, do you want to
24 have the second alternate come in?

25 THE COURT: Is he here?

1 DEPUTY U.S. MARSHAL HOFFARTH: Yes.
2 THE COURT: Fine.
3 (Alternate Juror No. 2 enters
4 the Court Room.)
5
6 THE COURT: You must have been a little mixed
7 up on the time.
8 ALTERNATE JUROR NO. 2: 11:30 you said, didn't you?
9 THE COURT: We said 11:00 but we are all here
10 and that is fine. I was just beginning
11 and I was beginning to say to the jury
12 that in this case as we have discussed
13 from time to time it is most important
14 that you decide the case upon what you
15 heard in the court here only and not
16 upon any other consideration, any
17 rumors, any newspaper articles, any-
18 thing like that. It would be most
19 unfair, a violation of your oath as
20 jurors to make your decision in this
21 case based upon anything else than
22 what you heard in the court room here.
23 I know that you will all do that to the
24 best of your ability.

25 * * * * *

(Excerpt concluded.)

I hereby certify that this record is a
true and accurate transcript from
stenographic notes in this case.

H. T. Noel & E. F. Knisley
OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Official Reporter
U. S. District Court

FBI Agent Describes Activity in Gambling Den

By TOM BUCKHAM

An FBI undercover agent told for the first time in court Thursday what he saw in a West Side gambling den allegedly operated by mobsters in 1974.

Richard A. Genova drew a detailed, often funny word picture for the jury in the Federal Court perjury trial of Nicholas Alberti.

Mr. Genova said he visited Nairy's Social Club, 314 W. Ferry St., over a six-month period, "most times, every day of the week," until the FBI raided the operation and another like it on Connecticut St.

He used an alias, Frank Paccione, and the help of an informant, Joseph Galioto, to gain entry to the club and the confidence of the men who ran the card games that went hours on end at stakes that reached thousands of dollars, Mr. Genova said.

While the "ziganette" games were in progress, access to the back room was blocked by bolted double doors leading from the luncheonette in front, Mr. Genova said.

A PERSON could enter only after identifying himself through a slot in one door, which was opened by a buzzer, he said.

Inside the large room were the long ziganette table, smaller card tables and billiard and ping pong tables.

"I saw ziganette being played four or five times a week," said Mr. Genova, who attempted to explain how the game is played.

The testimony seemed to confuse the jurors and Judge John T. Curtin, who had heard earlier witnesses try to describe the action — but fail.

The organizers filled various roles, Mr. Genova said under questioning by Edward Siddens of the Justice Department's Organized Crime Strike Force.

A "general supervisor" watched over the game and sometimes loaned money to the players. A "house man" dealt the cards, the "setup man" provided coffee, sandwiches and cigarettes for the players and the "doorman" guarded the entrance.

MR. GENOVA said he saw the defendant, Nicholas Alber-

ti, in the role of "setup man" during ziganette games "four or five times."

Alberti, 71, of 118-10th St. is accused of lying to a federal grand jury when he denied having seen gambling and loan-sharking activity at Nairy's.

"His main job was not to interfere with the game," Mr. Genova said of Alberti. "He'd wait until there was a pause in the game to serve coffee. He'd never lean across the table. His job was to be as inconspicuous as possible."

During one game, Mr. Genova said, reputed underworld enforcer Joseph Fino acted as supervisor.

"The people who were losing would get very loud and start arguing," Mr. Genova said. "Fino's job was to quiet them down."

At one point, Emil Noah, who was loaning money to players, ran out, and asked the dealer for cash from the "rake box," in which the house kept its 20 per cent share of the gambling proceeds, the witness testified.

"They got into a very heated discussion," Noah finally obtained the money by giving the dealer an IOU, Mr. Genova said.

ON ANOTHER occasion, one

of the participants, as a practical joke, pressed an alarm in the luncheonette that signaled a police raid to the players in the back room.

"It was humorous," Mr. Genova said. "The money disappeared from the table so quickly. Coffee was spilled all over, and afterward they told Mr. Alberti to clean off the table. The idea was to keep the game going all the time."

When Ziganette was in progress, he added, card games at the smaller tables stopped. "The only time they didn't stop was when Joe Fino was playing."

THE GAMES sometimes ran continuously, he said. Mr. Genova said he once played for 22 straight hours, using money supplied by the FBI.

"Isn't it true there were a lot of magazines and papers lying around?" asked defense attorney Brian Tuohy.

"No, just scratch sheets," Mr. Genova said.

After Mr. Genova stepped down, the prosecution rested.

The defense rested today without calling any witnesses.

Witnesses called by Mr. Siddens during the three-day trial, besides Mr. Genova, were the FBI informant, Joseph Galioto; Robert C. Stewart, chief of the Federal Strike Force, and the stenographer who recorded Alberti's grand jury testimony.

Pieri, Reputed Mafia Boss, Ends Federal Jail Term

By TOM BUCKHAM

Salvatore J. (Sam) Pieri, recognized by law enforcement officials as the head of organized crime in Western New York, was released from federal prison in Atlanta today.

The 65-year-old Pieri walked free 15 months after being sent back to the pen from Buffalo to serve out the rest of a five-year term for jury tampering.

His parole was revoked in March 1973 after the FBI identified him as a central figure in the operation of two West Side gambling clubs.

The first trial stemming from that investigation — a perjury case against Nicholas Alberti, identified as a minor organized crime figure — was scheduled to go to the jury in Federal Court today.

PIERI'S release follows the recent return to power in Laborers Local 210 of a faction closely identified with him.

The union's affairs are closely monitored by lawmen as a barometer of organized crime activity in Western New York.

Pieri of 172 Richmond Ave. was convicted in 1970 of tampering with the jury in a stolen-jewelry case in which he was a defendant.

A juror claimed he slipped her a \$100 bill during a recess.

Pieri was paroled in Decem-

ber 1973 after serving more than three years of the term imposed by the late Federal Judge John O. Henderson.

HIS PAROLE was revoked by the U. S. Parole Board after he was named in detailed affidavits by an FBI undercover agent, Richard A. Genova, and an informant, Joseph Galioto, on the operation of Nalry's Social Club, 314 W. Ferry St. and the Blue Banner Social Club, 374 Connecticut St.

Mr. Genova and Mr. Galioto told of watching high-stakes card games and loan-sharking activities in the clubs between June and October, 1974.

The FBI said then that Pieri was the likely leader of a council of syndicate lieutenants that took control of the Cosa Nostra in Western New York after the death of "Don" Stefano Magaddino in 1974.

PROCEEDS OF the gambling and loan-sharking operations at the West Side clubs went primarily to this council, according to the FBI.

Pieri was named in the affi-

davits as one of several persons who made the major decisions on the hiring of club employees and the loaning of money at exorbitant interest rates.

The recent change at Local 210 involved the return to power of a group, headed by Victor Randaccio, which has been closely identified with Pieri.

Victor Randaccio is the brother of the imprisoned Frederico Randaccio, the reputed mob leader in Buffalo before Pieri.

22

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-75-40

NICHOLAS ALBERTI,

Defendant

DECISION
and
ORDER

CURTIN, DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-75-40

NICHOLAS ALBERTI,

Defendant

APPEARANCES: RICHARD J. ARCARA, ESQ.
United States Attorney
(EDWARD H. SIDDENS, ESQ., Department of
Justice Attorney, of Counsel)
Buffalo, New York, for the Government.

BRIAN F. TOOHEY, ESQ., Buffalo, New York,
for the Defendant.

On June 14, 1976 the defendant in this case was convicted by a jury of making false declarations to a grand jury, in violation of 18 U.S.C. §1623.^{1/} The defendant moves for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure on the grounds that the evidence was insufficient to sustain a conviction, and because the grand jury questioning was too ambiguous and imprecise to support a conviction, or, in the alternative, for a new trial pursuant to Rule 33 on the grounds that the court should have questioned the

jury about a newspaper report that was allegedly prejudicial to the defendant.

The defendant had been called before the grand jury during an investigation of alleged violations of 18 U.S.C. §§1955, 1962, relating to illegal gambling, racketeering activity and other offenses against the United States. During the course of his testimony, the defendant was questioned about alleged illegal activities at a club known as "Nairy's Social Club" in Buffalo. The Government charged that Alberti's answers to some of the questions put to him before the grand jury were materially false. The court will deal initially with defendant's motion for acquittal.

The jury having returned a verdict of guilty in this case, the evidence must be viewed in the light most favorable to the Government. United States v. Gerry, 515 F.2d 130, 134 (2d Cir.), cert. denied, 423 U.S. 832 (1975). The evidence was sufficient for the jury to find, among other things, that a card game called ziganette was played at Nairy's, that the defendant was present at Nairy's at various times when this game was in progress, that the defendant acted as a "coffee and doughnut runner"

for the players, that Alberti did not actually participate in the games, and that some of the ziganette games and other card games were played for high stakes but that others were for little or no money.

In support of his contention that the questions put to him before the grand jury were too ambiguous and too imprecise to support a conviction for perjury, the defendant cites Bronston v. United States, 409 U.S. 352 (1973). In that case, which involved the similar provisions of 18 U.S.C. §1621, the Court did not directly rule on the ambiguity of the questions put to the defendant, but instead dealt with the narrow question:

whether a witness may be convicted of perjury for an answer, under oath, that is literally true but not responsive to the question asked and arguably misleading by negative implication. Bronston, supra, 409 U.S. at 352-353.

In the course of answering this question, the Court did, however, draw some guidelines for proper questioning.

As the Supreme Court emphasized in Bronston, implications that might normally be drawn from a casual conversation are not sufficient to support a perjury conviction:

[T]he statute does not make it a criminal act for a witness to willfully state any material matter that implies any material matter that he does not believe to be true.

Bronston, supra, at 357-58 (emphasis in original) (footnote omitted).

The reason for the strict construction of this statute, as the Court explained, is that there is

no reason why Congress would intend the drastic sanction of a perjury prosecution to cure a testimonial mishap that could readily have been reached with a single additional question by counsel alert--as every examiner ought to be--to the incongruity of petitioner's unresponsive answer.

Bronston, supra, at 358.

This is not to say, however, that the answers before a grand jury may be pulled apart and isolated in context so that they may be made to appear to be truthful or unresponsive. As the Second Circuit has stated: "If, in the natural meaning in the context in which words were used they were materially untrue, perjury [is] established." United States v. Bonacorsa, 528 F.2d 1218, 1221 (2d Cir. 1976).

The burden on the Government's questioner is therefore considerable. It is his responsibility to

sufficiently narrow the questions and to ask them with such precision that the witness must answer the query directly. Exact and clear questioning is the better safeguard against perjury:

[T]he perjury statute is not to be loosely construed, nor the statute invoked simply because a wily witness succeeds in derailing the questioner--so long as the witness speaks the literal truth.

Bronston, supra, at 360.

With this background and the perjury statute in mind, the court proceeds to consider the defendant's objections to the grand jury questioning and to the jury verdict.

During the course of the questioning, Alberti was asked the following questions:

Q. Do they play some game called siginete?^{2/}

A. Siginete?

(1) Q. Yes, that is a high stakes card game.

A. Not necessarily, no.

(2) Q. It isn't?

A. I haven't seen any game of siginete. Every time I go in there, the doors are open. You can go in there anytime. I go in there and have coffee, watch TV like a lot of other people do.

(3) Q. Isn't it true, Mr. Alberti, that there is a high stake siginete game that is in operation at that club almost twenty-four hours a day?

A. I have never seen one. I have never seen one, sir. I don't recall ever seeing one.

The evidence indicated that not all the games were for high stakes. Therefore, answer (1)A, although it is certainly misleading, cannot be considered false. Answer (2)A is non-responsive to the immediately preceding question. The first part of (2)A could be considered false if the question had been: "Have you seen a game of ziganette at Nairy's Social Club?" However, the Government has defined ziganette in its questioning as a "high stakes card game." Therefore, the witness must be given the benefit of the definition used by the Government. Since the evidence showed that the card game was not always played for high stakes, the answer is not false. The rest of answer (2)A is unrelated to any question the Government has asked. According to the evidence, the doors to the room where the ziganette games were played were usually shut. Therefore, this part of the answer could be

considered false. However, the Government did not question the witness further and it is unclear what doors the witness was referring to. The doors to the club itself were evidently open, or at least unlocked. Again, here as in the preceding question, the imprecision and the ambiguity in the Government's questioning remove any basis for a conviction of perjury.

Question (3) was the Government's opportunity to pin down a seemingly evasive witness. It is apparent at this point in the questioning that the Government lawyer does not believe the witness's responses to the preceding questions. But, instead of asking a short, direct and precise question, the question that is asked is compound and generalized. The witness is not forced to answer directly. Answer (3) is literally true for three reasons - Alberti testified that he was not at Nairy's around the clock, the evidence did not show that the ziganette game was in operation continuously, and the evidence showed that not all the games were for high stakes.

The Government next proceeded to question Mr. Alberti about a Mr. Bona. The questioning went as follows:

Q. What does Mr. Bona do for a living?

A. I don't know.

Q. He is at the club everyday; isn't he?

A. I don't know if he is at the club everyday. I don't know any activities that the man is in.

Q. Does he have anything to do with the siginete game?

A. Not to my knowledge.

Q. Nothing to do whatsoever with the siginete game?

A. No, not to my knowledge.

There was no evidence with regard to Mr. Bona's occupation, nor was there evidence that Mr. Alberti was at the club every day. On these questions, there was not sufficient evidence to support a perjury conviction. Although the remaining questions, dealing with Alberti's knowledge of Bona's participation in ziganette games at Nairy's, could have been phrased more precisely, they are sufficiently direct and unambiguous. See United States v. Chapin, 515 F.2d 1274 (D.C.Cir.), cert. denied, 423 U.S. 1015 (1975). From the evidence before them, the jury could reasonably infer that Alberti knew that Bona took part in the ziganette games at Nairy's.

Mr. Alberti was also questioned about the house percentage in ziganette games at Nairy's.

Q. What is the percent that the house takes out of the siginete game?

A. I don't know.

Q. Is it 5%?

A. I don't know.

Q. You don't know if it is 5%?

A. No.

Q. You don't know of any fixed percent that is taken from the pot?

A. No, I don't know.

Q. You are sure of that?

A. Yes, I am positive.

Here the questions were succinct and to the point. The Government asked directly if the defendant knew what the house take was, and he answered in the negative. The Government's evidence showed that Mr. Alberti was at Nairy's on many occasions when ziganette was being played, that he observed the game and acted as a runner for the participants. The Government is entitled to argue circumstantially that Alberti knew the house percentage, and the resolution of that question is for the

jury.

Finally, Mr. Alberti was asked whether he was ever a dealer and whether he knew who the dealers in the ziganette game were. He answered no to both questions. The evidence showed that ziganette is an extremely complicated game and that the deal rotates. During the course of the game, many of the participants would act as dealer at one time or another. The defendant argues that this is a question that cannot be answered simply, because the game is so difficult to understand. The court believes that this is a question for the jury. The Government did ask who the "dealers" are, indicating that the Government understood that more than one individual would be a dealer during a game. The Government should be allowed to argue that Alberti understood the game and knew who the "dealers" were.

The court will now deal with the defendant's alternative contention - that he should be granted a new trial because of the potential prejudicial publicity in his case. The defense rested its case on Friday, June 11, 1976. Both the prosecution and the defense summed up that

morning, and the jury was sent home to return the following Monday for instructions. In the Friday evening edition of a local newspaper, an article appeared which linked Mr. Alberti to one Salvatore Pieri, who, according to the article, is "recognized by law enforcement officials as the head of organized crime in Western New York." The article described Mr. Alberti as "a minor organized crime figure."

This news article appeared prominently on the "Second Front Page" of the evening paper. The headline did not in any way imply that the article dealt with Mr. Alberti or his trial. During the course of the trial, the jury had been instructed not to discuss the trial, nor to pay any attention to any coverage of the case in the media.

When the trial resumed Monday, June 14, 1976, counsel for the defendant called the newspaper article to the court's attention and requested additional voir dire of the jury to determine whether or not any jurors had read the article. After some discussions between the court and counsel for the Government and for the defendant

about how best to deal with this situation,^{3/} the court stated:

I will ask them if they have read any newspaper articles about this case or about Mr. Alberti and then if the answer is "no" I will proceed to the charge but again emphasize that they are to make up their mind in this case based upon only the evidence.

(June 14, 1976 Transcript [hereinafter Tr.] at 5-6).

The court then summoned the jury to return to the courtroom. After some confusion and delay due to the absence of one of the alternate jurors, the court addressed the jury as follows:

. . . [A]s we have discussed from time to time it is most important that you decide the case upon what you heard in the court here only and not upon any other consideration, any rumors, any newspaper articles, anything like that. It would be most unfair, a violation of your oath as jurors to make your decision in this case based upon anything else than what you heard in the court room here. I know that you will all do that to the best of your ability.
(Tr. at 9).

No additional voir dire was conducted. After the instructions to the jury were completed, counsel for defendant stated that he had no objections and no further requests.

Cases of prejudicial publicity must be dealt with on a case-by-case basis. Marshall v. United States, 360 U.S. 310 (1959). The central factor for the court to consider is the extent of the prejudice, "since a new trial is required only when substantial prejudice has occurred." United States v. D'Andrea, 495 F.2d 1170, 1172 (3d Cir.), cert. denied, 419 U.S. 834 (1974) (footnote omitted). The threshold question here is whether there existed the possibility of substantial prejudice to Mr. Alberti, since it is unknown whether any juror actually read the article.

In this case, the court believes that there existed the possibility of substantial prejudice to the defendant. The article was prominently displayed; the wording of the headline would not signal a conscientious juror to avoid reading the article; the timing of the article - coming between summations and instructions - was most inopportune. The most flagrant statement - identifying Alberti as a "minor organized crime figure" - appeared early in the article. This statement presented obvious prejudice to the defendant. United States v.

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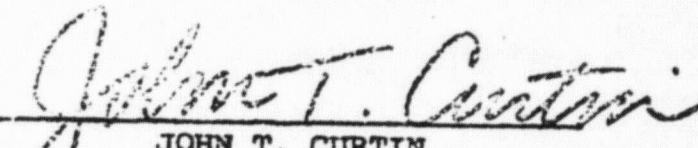
Hankish, 502 F.2d 71, 76 (4th Cir. 1974).

The court had agreed to question the jurors, but then failed to do so. It is not the Government's fault that this omission occurred. The defendant's counsel should have brought it to the court's attention. Nonetheless, the court believed at the time that the additional voir dire should have been conducted and inadvertently failed to carry out its intention. Had the jury been questioned, it is probable that curative instructions, if needed, could have been given. Since the potential for substantial prejudice existed, and it cannot be determined whether there was actually substantial prejudice to the defendant or not, the defendant should be granted a new trial.

The defendant's motion in the alternative for a new trial is granted. The defendant's motion for acquittal on the grounds that the questioning before the grand jury was imprecise and on the grounds that the evidence was not sufficient to support a conviction for perjury is denied. However, those portions of the indictment which the court ruled could not support a conviction for perjury, supra,

shall be stricken from the indictment.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: September 30, 1976

1/

18 U.S.C. §1623(a) makes it a crime for anyone "under oath in any proceeding before . . . any . . . grand jury of the United States [to] knowingly make any false material declaration."

2/

There was some confusion about how the name of the card game is spelled. The stenographer at the grand jury hearing, relying on phonetics, spelled it "siginete." In the indictment, the Government spelled it "ziganette." The latter is apparently the proper spelling.

3/

In a situation such as this, the court must carefully balance a sufficiently probing inquiry against the danger of overemphasizing the incident in the jurors' minds. See United States v. D'Andrea, 495 F.2d 1170, 1173 n.8 (3d Cir.), cert. denied, 419 U.S. 834 (1974).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Appendix
has this day been mailed to counsel for appellee at the
following address:

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